IRVIN WALL (ON RECONSIDERATION)

IBLA 82-1062 Decided May 10, 1984

Petition for reconsideration of Irvin Wall, 70 IBLA 183, 90 I.D. 3 (1983), to the extent that the Board vacated decisions by the Oregon State Office, Bureau of Land Management, rejecting oil and gas lease offers OR 29036 and OR 28232.

Petition granted; Board decision vacated; State Office decisions rejecting offers affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: 640-acre Limitation--Oil and Gas Leases: Lands Subject to

   Where a subdivision which is available for oil and gas leasing in one township would normally be adjacent to land similarily available in another township, a holding that a lease offer for one such subdivision which does not include the other is violative of the "640-acre rule" will be vacated upon a showing that the two townships are offset and the subdivisions concerned are not actually adjacent.

2. Oil and Gas Leases: Acreage Limitations--Oil and Gas Leases: Applications: Generally

   Under 30 U.S.C. § 184(d) (1982), no person, association, or corporation shall take, hold, own, or control at one time oil and gas leases or interests therein on land exceeding 246,080 acres in any one State other than Alaska. Under 43 CFR 3101.1-5 (1981), acreage applications and offers for oil and gas leases were included in calculating the total holdings. If an offeror filed a group of applications, any one of which caused him to exceed the acreage limitations, the entire group were required to be rejected pursuant to 43 CFR 3101.1-5(c)(3)(ii) (1981).

3. Oil and Gas Leases: Acreage Limitations--Oil and Gas Leases: Applications: Generally

   Exceeding the maximum acreage limit when filing an offer to lease was not a minor defect which was subject to cure.

APPEARANCES: William R. Murray, Esq., Office of the Solicitor, Washington, D.C., for the Oregon State Office, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

In Irvin Wall, 70 IBLA 183, 90 I.D. 3 (1983), we considered an appeal from separate decisions of the Oregon State Office, Bureau of Land Management (BLM), rejecting Wall's oil and gas offer OR 28232 in part and and his offer OR 29036 in full. Wall's offer OR 29036 had been rejected because it had overlapped with land described in senior offers OR 26411 and OR 27567. We held that BLM properly rejected OR 29036 to the extent of its conflict with OR 26411, but vacated the State Office's rejection of Wall's offer to the extent that it conflicted with OR 27567, an offer filed by J. A. Padon, Jr. In his appeal, Wall had asserted that Padon's offer was filed on 162.93 acres in T. 5 S., R. 25 E., Willamette meridian, when there was additional adjacent land available for leasing in T. 6 S., R. 25 E. When the Board attempted to review the case, it was found that the only status (or other) plat in the record was the one for T. 5 S., R. 25 E. Therefore, the Board called upon BLM to supply the plat for T. 6 S., R. 25 E., which was done. Our review indicated that lot 4 of sec. 6, T. 6 S., R. 25 E., was available for leasing, as alleged by Wall. Moreover, the position of that lot on the north boundary of the township was such that it would, in ordinary circumstances, lie adjacent to lots 3 and 4 of sec. 31, T. 5 S., R. 25 E., which were included in Padon's offer. In the usual survey configuration sec. 6 lies directly below sec. 31 of the township adjacent to the north. Despite this Board's request for additional status information, BLM failed to indicate that this situation was in any way extraordinary. Therefore, upon finding that lot 4 of sec. 6 was indeed available for leasing, the Board vacated BLM's decision to that extent, holding that the lease which had issued to Padon pursuant to his offer OR 27567 improperly included lots 3 and 4 of sec. 31.

[1] Subsequently, BLM petitioned for reconsideration of our decision, saying, in part:

> We are returning Wall's oil and gas offer OR 29036 for the Board's reconsideration of Wall's appeal regarding the third assertion against Padon's offer OR 27567 (Item No. 2 - 70 IBLA 186).
>
> Wall contends that Padon's offer of 162.93 acres violated the 640 acre rule by not applying for the adjacent lands in Lot 4 of Sec. 6, T. 6 S., R 25 E. Because of the offset of the townships this land is not adjacent to Padon's offer (see plat enclosed). Note: Township 5 S., R. 25 E., is offset from 6 S., R. 25 E., with Sec. 6 of T. 6 S., R. 25 E., being contiguous to 5 S., R. 24 E., but not to 5 S., R. 25 E. Therefore, the Bureau feels that they properly rejected Wall's offer and issued Padon's lease correctly.
>
> Your reconsideration of the above is appreciated.

The petition was accompanied by plats of both townships taped together to illustrate the offset and the fact that lot 4, sec. 6, is not adjacent to lots 3 and 4, sec. 31, in the next township.

Reference to an official Departmental map of Oregon confirms the information first revealed by BLM in its petition for reconsideration. This information makes clear that Wall was incorrect in alleging that Padon had failed to file for adjacent land when he was required to do so. The State Office decision rejecting oil and gas lease offer OR 29036 in full is now affirmed, and our previous holding on this issue is vacated accordingly.

Wall had also appealed the partial rejection of his offer OR 28232, which BLM rejected because it described land partially overlapping with land described in senior offers OR 26522 and OR 26851. We held that the State Office properly rejected Wall's offer to the extent that it conflicted with OR 26851. However, we held further that the State Office improperly rejected Wall's offer to the extent of its conflict with OR 26522 because, when Shell Oil Company filed offer OR 26522, it exceeded the maximum acreage established by 30 U.S.C. § 184(d) (1982). Shell's offer, OR 26522, was one of a group of 54 noncompetitive oil and gas lease offers filed by Shell on April 30, 1981, and stamped as being filed at precisely the same moment. Counsel for BLM has filed a second petition for reconsideration seeking review of this aspect of our prior decision.

[2] In our prior decision we referred to the following provision of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 184(d) (1982):

> No person, association, or corporation * * * shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska.

The corresponding regulation, 43 CFR 3101.1-5 (1981), included acreage in applications and offers for oil and gas leases in the total holdings calculated. 1/

That regulation further provided: "For tracts not subject to the simultaneous filing procedures of Subpart 3112, if [the offeror] files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the

---

1/ Prior to the promulgation of the latest revisions to the oil and gas leasing regulations, 48 FR 33648-82 (July 22, 1983), inclusion of offers for over-the-counter noncompetitive oil and gas leases in acreage holding computations had been a well established practice of the Department. See Shell Oil Co., A-30575 (Oct. 31, 1966); Solicitor's Opinion, M-36670, 71 I.D. 337 (1964); 2 Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases § 25.7 (Supp. 1980). The new regulations, however, do not assess acreage in pending offers to the offeror's account. Shell's offers must be adjudicated pursuant to the regulations in effect at the time the offers were filed. A change in the regulations cannot operate to give Shell a priority over another qualified applicant. See Irma Spear, 52 IBLA 360 (1981).

entire group [of] applications, offers, options, or interests in options will be rejected." 43 CFR 3101.1-5(c)(3)(ii) (1981) (emphasis added). Thus, if any one of the offers on April 30, 1981, caused Shell to exceed the maximum limit for acreage holdings, the entire group should have been rejected.

Counsel for BLM contends, however, that the Board erred in concluding that Shell had exceeded its acreage limitation by filing the April 30 offers. The Board's decision was primarily based on information submitted with the record in Jerry M. Pritchard, 70 IBLA 154 (1983). Counsel now offers the following argument in his petition for reconsideration:

> In arriving at the conclusion that Shell exceeded the acreage limitation, the Board relied on the BLM letter of May 7, 1982, to Ronald Campbell (Attachment 3) as the basis for the total acreage contained in Shell's oil and gas lease offers. The May 7, 1982, letter was based on the acreage totals placed by Shell on its offers. It was a response to a public inquiry and was dispatched in an expeditious manner with regard to BLM priorities. Acreage calculations made by BLM in the normal course of business demonstrate the actual acreage involved. Based on these calculations, as described in the BLM transmittal to the Board dated September 16, 1982, of the Pritchard appeal (Attachment 4), Shell was not, and has never been, in violation of the acreage limitation.
>
> The acreage figures which Shell placed on its various offers total 246,757.47 acres as of April 30, 1981, and as of July 9, 1981. Attachment 4. This, of course, is over the allowable acreage of 246,080. BLM's calculation of the actual acreage shown on the official title plats for the land described in the Shell offers totals 245,705.09, which is under the allowable figure.

(Petition at 3).

BLM contends that Shell should not be held responsible for overstating the acreage on its application, arguing that the failure on the part of an applicant to state the correct acreage on the offer is not a fatal defect since this information is not required by regulation. Inasmuch as BLM contends that Shell was not, in fact, over the allowable acreage limit when its offers were properly computed, BLM asks that the Board reconsider its decision affording Wall's offer priority.

Two independent questions are presented for our decision: (1) is an offeror chargeable for purposes of acreage computation with the acreage figure which he includes in the offer regardless of the actual acreage of the lands described; and (2) was Shell properly chargeable with the acreage in excess of the statutory limit. For reasons set forth below, we answer both questions in the negative.

As counsel for BLM correctly notes, while 43 CFR 3103.3-1 requires that the first year's rental based on total acreage accompany the offer to lease, there is no regulatory requirement that an offeror must enter an acreage

figure on the offer form. As a point of fact, counsel avers that BLM state offices do their own computation of the acreage involved as one of their first points of adjudication, in order to determine whether there are or are not sufficient rentals tendered to cover the acreage described by the offer.

Thus, the space for inclusion of the total area acreage figure can be seen as an added convenience for the applicant which advises him or her of the amount of rent which must accompany the offer. In Irvin Wall, 67 IBLA 301 (1982), we held that the space provided for county designation was also "an added convenience found in the offer form" and, in essence, held that providing the wrong county did not invalidate the offer. Similarly, in another decision styled Irvin Wall, 68 IBLA 308 (1982), we held that the requirement that an offer contain a meridian with the description was "surplusage" where the state in which the land was located was governed by only one meridian. It is altogether consistent with these decisions that, in the absence of a regulation directing entry of a total acreage figure and, in light of the fact that BLM admits that it does not rely on any figure entered, we treat any acreage figure entered by an offeror as controlling for neither rental computation nor acreage limitation.

The dissent suggests that an offeror is bound by the acreage figure entered on the lease forms. To justify this holding, the dissent argues first that "the offeror must calculate and enter the amount of acreage for each offer in order to meet [its] responsibility [not to violate the statutory limitation], and also to ascertain the amount of the rental to be paid." The short answer to this argument is that it assumes the ultimate conclusion, viz., that an offeror is required to enter the acreage amount on his offer. There is, however, no such requirement.

Alternatively, the dissent suggests that since the regulation then applicable, 43 CFR 3101.1-5(c)(3)(ii) (1981), required rejection of all offers filed in a single group, wherever any single offer caused the offeror to exceed the maximum chargeable acreage amount, an offeror is properly chargeable with the acreage amount which the offeror itself has declared it is attempting to lease. We do not agree.

While it is true that the filing of the group of offers fixes the point in time when a determination must be made, and it is equally true that it may take BLM some time to compute the total acreage sought, it does not follow that BLM must, therefore, charge an offeror with the acreage stated in the interim between the filing of the offer and BLM's computation of acreage. The purpose of fixing a definite point in time is merely to establish what consequences will ensue should BLM ultimately establish that an offeror was over-acreage. Thus, if on May 1 an offeror filed 10 offers aggregating 10,000 acres which resulted in the offeror exceeding the maximum limitation by 1,000 acres, all 10 offers would be rejected when this fact was discovered. This is true even if by the time that BLM was apprised of the fact that, on May 1, the offeror had exceeded the acreage limitation, the offeror had relinquished other leases with sufficient acreage to lower the total chargeable acreage below the prohibited level. Therefore, there is no real justification for charging an offeror with the stated acreage on an interim basis since, if the offeror is eventually deemed to have exceeded the acreage limitation, all offers will be rejected regardless of any intervening transactions on the offeror's part.

Moreover, the standard advocated by the dissent would penalize only those who had miscalculated on the high side. An offeror who had understated the acreage or, indeed, who had left the acreage space blank, would not be penalized at all. There is no justification for treating one error as preclusive of any priority and yet when the same type of error is made in the opposite direction treating that error as irrelevant. Unless the dissent is espousing the view that any error in acreage computation invalidates an offer, a holding which we expressly reject, the result of its approach will inevitably lead to disparate treatment of similar mistakes. Such a result, we feel, would be arbitrary, per se. We hold, therefore, that an offeror is properly chargeable for the acreage described in the offer and not for the acreage figure, if any, placed thereon.

What remains to be determined is whether Shell's offers sought acreage which, when correctly computed, caused it to violate the statutory limitation. Counsel for BLM argues that there was no violation. The dissent contends that there was. While we admit that some of the computations presented by BLM are, in fact, erroneous, we conclude that even when proper corrections are made Shell was within the statutory limitation. We will first discuss those additions to Shell's acreage which we believe are proper and then deal with those additional adjustments implicitly advocated by the dissent.

Attachment 4 to BLM's petition for reconsideration includes a table setting forth all of Shell's oil and gas lease offers relevant to the calculation of acreage in this appeal, in which it is concluded that Shell was properly chargeable with 245,705.09 acres. The table indicates the date filed, the acres stated on the offer, BLM's calculation of the acreage described by each offer, and other information not pertinent here. We assume that where there was no disagreement between Shell and BLM, the acreage was calculated accurately. However, we have examined 38 offers in which Shell's statement of the acreage differed from the figure calculated by BLM. 2/ For 18 of these offers, the discrepancy is due to failure either by Shell or by BLM to add the acreage correctly. The net effect of these miscalculations requires us to add 89.02 acres to BLM's calculation of total acreage of 245,705.09 acres, yielding 245,794.11 acres, still 285.89 acres under the statutory limit of 246,080 acres. 3/

2/ The following is a list of Shell's oil and gas lease offers in which the acreage stated on the offer differed from BLM's calculation of acreage: OR 25997, OR 25998, OR 26003, OR 26004, OR 26005, OR 26015, OR 26016, OR 26017, OR 26018, OR 26367, OR 26369, OR 26374, OR 26377, OR 26380, OR 26381, OR 26383, OR 26384, OR 26387, OR 26390, OR 26391, OR 26393, OR 26394, OR 26417, OR 26422, OR 26423, OR 26427, OR 26502, OR 26504, OR 26507, OR 26517, OR 26520, OR 26521, OR 26525, OR 26532, OR 26534, OR 26536, OR 26549, and OR 26555.

3/ For the following offers, Shell miscalculated the acreage and BLM gives the correct figure: OR 26017 (Shell: 400.86 acres; BLM: 454.50 acres); OR 26374 (Shell: 5039.83 acres; BLM: 5039.78 acres); OR 26422 (Shell: 757.64 acres; BLM: 758.24 acres); OR 26502 (Shell: 2000.69 acres; BLM: 2000.76 acres); OR 26504 (Shell: 4614.89 acres; BLM: 4550.57 acres); OR 26507 (Shell: 1592.47 acres; BLM: 1592.67 acres); OR 26521 (Shell: 3800.00 acres; BLM: 3880.00 acres); OR 26525 (Shell: 443.71; BLM:

In another offer, Shell's stated acreage exceeds BLM's because of an apparently mistaken description. Shell's offer OR 26377 indicates that the total area is 1734.46 acres. However, the offer describes the following land in sec. 19, T. 7 S., R. 19 E., Willamette meridian: lots 1-4, E/2 S/2, W/2 E/2, NE/4 NE/4, SE/4 SE/4. BLM assessed no acreage for the E/2 S/2. In our view, however, the description "E/2 S/2" appearing on OR 26377 is a cumbersome but not impermissible way of describing the SE/4 although it appears that Shell may have intended to apply for the E/2 W/2. Shell's calculation of acreage includes 160 acres allocable to this described subdivision. BLM's total already includes 120 acres for other subdivisions in the SE 1/4, so only 40 additional acres needs to be added to BLM's figure to yield the correct total of actual acreage for the land actually described in the offer. When this final correction is made, the acreage properly chargeable to Shell aggregates 245,834.11 acres, placing it under the statutory limit. Thus, our determination in Irvin Wall, 70 IBLA 183, 90 I.D. 3 (1983), was not correct.

The dissent, however, implicitly suggests that two further adjustments should be made, since without these Shell has clearly not exceeded the acreage limitation. First, it argues that Shell should be charged with an additional 160 acres for OR 26381. Oil and gas lease offer OR 26381 described, inter alia, the "3/2 W/2" of sec. 27, T. 6 S., R. 24 E., Willamette meridian. This description, as written, obviously describes nothing.

Shell well may have intended to apply for an additional 160 acres. Intent, however, has never controlled over the actual description. The description, as written, describes no parcel of land with specificity. Even assuming that it was intended to describe one-half of a half section, it is impossible to determine from the description whether Shell intended the north, south, east, or west half of the half section. If it intended any of the cardinal directions other than "east," no acreage would be added since all the other lands would have been described once already. Thus, the assessment of 160 acres is based on the dissent's assumption of what Shell intended.

---

fn. 3 (continued)
363.93 acres); OR 26549 (Shell: 2723.05 acres; BLM: 2722.62 acres); OR 26555 (Shell: 3073.61 acres; BLM: 3033.61 acres).

Three of Shell's offers overstated the acreage because Shell had described overlapping subdivisions yet added acreage described in each section as if they were separate pieces of land. BLM gives the correct figure for the land described in the offers. These offers are OR 26390 (Shell: 2920.00 acres; BLM: 2880.00 acres); OR 26534 (Shell: 4638.32 acres; BLM: 4551.12 acres); and OR 26536 (Shell: 1467.31 acres; BLM: 1267.31 acres).

In certain offers BLM miscalculated the actual acreage, so BLM's actual acreage calculation must be adjusted according to the figures shown in the following table:

Serial No.	Shell acreage	BLM acreage	Actual	Adjustment
OR 26367	890.73	730.71	730.73	+ 0.02
OR 26387	520.00	440.00	520.00	+ 80.00
OR 26391	5000.77	4800.74	4960.74	+160.00
OR 26427	6301.57	6292.47	6301.47	+ 9.00
OR 26517	1160.42	1320.42	1160.42	-160.00
				89.02

There have been many cases in the past in which an erroneous description duplicated lands already sought in an offer. The offeror invariably argued that it was clear from the acreage description which land was sought. The universal answer by the Department was that BLM could not amend a description to make it acceptable. See, e.g., Lendal R. Smith, Sr., A-28868 (Aug. 10, 1962), and cases cited. More specifically, in Duncan Miller, A-28767 (July 23, 1962), a description of the N 1/4 was held to be a defective description and the syllabus noted that "a description of land in an oil and gas lease offer which in part fails to identify any land is a nullity which requires elimination of the defective portion of the description from the offer." Thus, we are required by our adjudicative precedents, which hold that we will not attempt to guess at what an applicant meant when the actual description is ambiguous, to treat the "3/2 W/2" as an absolute nullity for any purpose, including acreage computation. Shell cannot be assessed any acreage for this description.

The second disputed component involves acreage computations for descriptions which describe fractional sections and lots in terms of a regular subdivision. The dissent necessarily implies 4/ that, where this is done, an applicant is properly charged with acreage as if the subdivision sought were regular, since this is how he described it. Applicable precedent, however, indicates a contrary conclusion. The decision which authorized the filing of offers in terms of legal subdivisions where the lands sought were actually fractional subdivisions and lots was Robert P. Kunkel, 74 I.D. 373 (1967). It is clear from a reading of that decision that an applicant is only chargeable for acreage purposes with the actual acreage involved. Thus, the decision noted "where appellant described the land in section 19 desired as the N 1/2, it is apparent that reference can be made to the survey plat to ascertain the acreage and the limits of the description." Id. at 377 (emphasis supplied). That decision directly eschewed basing rentals on the description contained in the offer. It held "if the land desired can be determined by reference to the plat of survey and the acreage determined from that plat, and if there is adequate rental submitted to cover the acreage, these fundamentals are satisfied." Id. at 378 (emphasis supplied). Therefore, the amount of acreage properly chargeable to Shell is the actual acreage of the fractional subdivisions. Indeed, BLM does precisely this when it correctly notes that Shell is liable for the extra acreage in those cases where the fractional subdivisions were larger than normal subdivisions. 5/

4/ That the dissent would charge Shell with the full acreage for these sections is made clear from the fact that unless this acreage is added Shell would not be over the acreage limitation.

5/ The offers falling within this group are OR 25998, OR 26015, OR 26380, OR 26384, OR 26393, and OR 26423. As noted, Shell is chargeable for the actual acreage when the actual acreage exceeds the amount attributable to a normal subdivision. When an applicant uses a regular description for a parcel of land, but the parcel of land contains greater acreage, the applicant must submit rental for all of the acreage, not just that attributable to the regular subdivision. And, if he submits rental inadequate to cover all of the acreage within the limits of curable deficiency, the rental will be deemed insufficient and the offer rejected. See, e.g., James M. Chudnow, 67 IBLA 76 (1982).

Thus, under our computation of the acreage properly chargeable, Shell is not over the maximum acreage limitation. Therefore, our prior decision holding to the contrary is not sustainable and must be vacated.

We note, however, that Counsel argues that if the Board held that Shell was chargeable for excess acreage from the filing of its April 30 offers, the Board should still reconsider and reverse its earlier decision on this issue because of the failure to consider properly the sequence of events leading to Shell's alleged violation of the acreage limitation. He offers the following explanation for this sequence:

> By April 30, 1981, Shell had 139 oil and gas lease offers pending with BLM on which Shell had placed acreage figures totalling 246,757.47 acres. Attachment 4. Of these, 54 were filed on April 30. Id. The regulations prescribe that when an applicant files a group of oil and gas lease offers at the same time which results in total acreage holdings in excess of the statutory acreage limitation, the entire group of offers must be rejected. 43 CFR § 3101.1-5(c)(3)(ii). Therefore, only the 54 offers filed on April 30 should have been rejected (assuming the actual acreage in the offers is not considered controlling.) The Board correctly applied this rule in its decision but for one crucial error--the April 30 group of offers was not the group that ultimately exceeded the acreage limitation as far as appellant's lease offer is concerned.
>
> By decision dated June 30, 1981, BLM rejected 61 of Shell's offers for failure to file evidence of qualification. Thus, these offers no longer counted against Shell's acreage holdings, and Shell no longer exceeded the statutory maximum. Jerry M. Pritchard, 70 IBLA 154, 157 (1983). On July 9, 1981, Shell provided evidence of its qualifications for these offers and obtained a new priority date. Attachent 4. Had appellant filed his offer before June 30, 1981, the Board's decision would be correct (again, assuming the actual acreage is not considered controlling). However, appellant filed offer OR 28232 on July 29, 1981, after Shell had filed its corrected offers. Once BLM rejected a group of offers and Shell refiled them, this latter group became subject to rejection under 43 CFR § 3101.1-5(c)(3)(ii) as the group which allegedly caused Shell to exceed the maximum. Shell's offer (OR 26522) which conflicted with OR 28232 was not part of the corrected group filed on July 9, 1981, (Attachment 4) and was therefore not subject to rejection on July 29, 1981, when appellant filed his offer.

(Petition at 6-7).

[3] We consider this approach contrary to both the regulation and the statute. Departmental regulation, 43 CFR 3101.1-5(c)(3)(ii) (1981), required BLM to reject the offer with which Wall's was in conflict. Instead, BLM would treat excess acreage as a curable defect, and argues that since OR 26522 was no longer the cause for Shell's exceeding the statutory acreage limitation at the time Wall filed his offer, Wall's offer should not be accorded priority. The problem with BLM's argument is that offers which were subject to rejection

were nevertheless chargeable to the oil and gas lessee's account until finally adjudicated. The applicable regulation required rejection of Shell's conflicting offer at the time it was filed, so that it could never earn priority. This defect was not subject to cure. Nevertheless, since Shell was not, in fact, over the acreage limitation, there would be no defect needing to be cured.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, our prior decision is vacated, the State Office decisions are affirmed, and the case files are remanded for further action consistent with this opinion.

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

I agree with Judge Burski, but I would like to make two points about the procedures that were followed in this case.

First, since joining this Board I have had several occasions to regret the decision of the Office of the Solicitor or the Bureau of Land Management not to participate in an appeal of a BLM decision. The reasons for the decision may or may not be sufficient. The result, however, is that we are often left with a distorted view of the case, not because we are inclined to doubt the soundness of a decision that is undefended (although that thought occasionally occurs to us) but because we have heard only one side of the story. Even where a decision fully sets forth its rationale--and by no means all of BLM's do that--the appellant's arguments go unanswered. We can usually, through our own research and thought, figure out most of the right solutions. But without adequate representation of BLM we are never sure of all the background of or reasons for its decision, and thus our decision on appeal may miss the mark or overlook something altogether.

I recognize that under 43 CFR 4.414 participation in a case is not mandatory. Where a party chooses not to participate, it simply increases the risk that it will be disappointed and decreases the legitimacy of any complaints if it is. Where a case is straightforward or routine, taking such risk might well be justified as saving the party's time and effort for other matters. However, where a case is complex, involves either important principles or potentially high costs, or is clouded with animus, participation seems to me incumbent.

The petition for reconsideration from the Office of the Solicitor in this case states at its conclusion: "We regret the necessity for petitioning the Board to correct a decision in which no appearance was entered on behalf of BLM. In this petition, however, no new factual information has been presented. Neither BLM nor this office felt it necessary to enter an appearance in defense of the BLM decisions, confident the Board would, as it did, correctly state and apply the law. Unfortunately, we did not consider the possibility that the Board would misread the factual material transmitted with the appeals."

As my colleagues' opinions amply demonstrate, this case does not involve a mere "misreading" of the facts. I urge BLM and the Office of the Solicitor to consider carefully the advisability of participating in a case where any one of the criteria set forth above is met. This case clearly meets the "complex" criterion. Had BLM participated in it, considerable time, effort, and concern might have been saved.

Secondly, the petition for reconsideration from the Office of the Solicitor was filed in April. An earlier one from the Oregon State Office of BLM was filed a month earlier. The Board's decision was issued in January. 43 CFR 4.21(c) provides that a request for reconsideration must be filed "promptly." Both the public at large and the agencies which administer the Federal lands have a right to rely on, and act upon, decisions of this Board,

which are final for the Department. To reconsider such decisions long after they are rendered could severely prejudice those who have taken actions in the interim based on such reliance. Pathfinder Mines Corp. (On Reconsideration), 76 IBLA 276, 278 (1983). Petitions for reconsideration should, in my view at least, be filed within 30 days of receipt of the decision. Cf. 43 CFR 4.1276(a).

Will A. Irwin
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING, DISSENTING:

In my opinion, BLM and the panel majority have overreached themselves in an effort to extricate Shell from a mess of its own making. At the time Shell filed this bundle of offers, its own computation of the acreage represented by each of them, when totaled and added to the acreage already chargeable to Shell, was enough to put it over the statutory limit. Since acreage is chargeable from the moment an offer is filed, the then controlling regulation, 43 CFR 3101.1-5 (1981), was immediately operative.

That regulation provided: "For tracts not subject to the simultaneous filing procedures of Subpart 3112, if [the offeror] files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group [of] applications, offers, options, or interests in options will be rejected." (Emphasis added).

There should have been nothing more to this case. Had BLM recognized that Shell was, by its own calculations, in violation of the statute, the entire group of offers should have been summarily rejected, as the regulation required. It is my impression that the only reason this was not done was that BLM failed to perceive the problem until several months later, after BLM had commenced adjudication of these and subsequent Shell offers on an individual basis, when its attention was directed to Shell's acreage account by a member of the public. BLM's reaction was to attempt to show that on the basis of its offer-by-offer adjudication that Shell was actually not over acreage, notwithstanding Shell's own calculations of what it had applied for.

As noted above, 43 CFR 3101.1-5 (1981), required that where a group of offers is filed, any one of which exceeds the maximum chargeable acreage amount, the entire group of offers must be rejected. The filing of that group of offers fixes the point in time when the determination must be made. The painstaking analysis by BLM of the actual amount of acreage in each offer may be completed days, weeks, or months later. Until that process is completed and a final determination made by BLM, the offeror must be accountable for and chargeable with the acreage amount which the offeror itself has declared it is attempting to lease. To illustrate this, let us assume, hypothetically, that Shell had no chargeable oil and gas lease interests whatever in the State of Oregon until it made one filing of a group of offers which, by Shell's own calculations, totaled 249,000 acres. The entire group of offers would have been subject to immediate rejection, and BLM would not first have been obliged to check the acreage described in each offer to ultimately confirm or refute Shell's own declaration of the amount of acreage for which it was applying. The Bureau contends that Shell should not be held responsible for overstating the acreage on its offers, because failure on the part of an applicant to state the correct acreage on an offer is not a fatal defect since this information is not required by regulation. This contention is not entirely accurate. Because an offer must be accompanied by advance payment of the first year's rental, an offeror is required to calculate the acreage todetermine how much rental he must submit. I adhere to our previous holding that Shell is responsible for the acreage total given in its offers. However, by my analysis, Shell was not over-acreage merely because it said it was over-acreage, but because it was over as a matter of actual fact.

The majority opinion takes the position that because in one offer Shell mis-described the land it applied for in such a way as to make the description unacceptable, Shell should be charged with no acreage at all for that description while the offer was pending adjudication, notwithstanding that Shell itself had declared that it was a tract of 160 acres which it was seeking. In rebuttal, I point out that while the error was readily apparent in that particular instance, other cases of alleged or potential mis-description are not so clear, e.g., cases involving complex metes and bounds descriptions, or non-customary descriptions such as the "S3/4 of Sec. 31." In such cases, the ultimate acceptability of the offer might not be determined until the question had been adjudicated through the appellate process, and might be decided either way. It would be illogical to hold that while an offer was pending final determination the offeror was not chargeable with the amount of acreage he declared that he intended to describe, or with any amount of acreage, simply because the efficacy of the description was in question. The rule must be that the amount of acreage stated in the offer was chargeable against the offeror's account from the time the offer was filed until a final adjudication of the offer determines that a higher or lower amount is chargeable, or that the offer is wholly unacceptable; and that rule must be applied in all cases of apparent mis-descriptions, not just to certain selected instances where the error is clearly apparent. Acreage stated in an offer was chargeable when the offer was filed, not when its acceptability was determined.

The majority opinion adopts BLM's position that an offeror, such as Shell, need not enter the acreage figure in the space provided on the offer form for that purpose, and that if the offeror does provide an acreage figure, it is essentially irrelevant what figure is given, because BLM makes its own acreage calculations anyway as one of its initial steps in the adjudicative process.

I disagree. In filing its offers, the offeror has a primary responsibility not to violate the statutory limitation. The offeror must calculate and enter the amount of acreage for each offer in order to meet this responsibility, and also to ascertain the amount of the rental to be paid. To say otherwise would be to hold that an offeror who holds interests which are at or near the statutory limit bears no responsibility for exceeding the limit by the subsequent filing of offers which, on their face, would apparently have that effect, and that BLM bears the sole and exclusive responsibility to so monitor and police the acreage chargeability of such parties as to prevent violations of the statute. This simply is not so. It is the primary responsibility of the lessee to remain within the limitation imposed by law, and BLM's regulatory responsibilities of enforcement are secondary.

Finally, the majority's reliance on Robert P. Kunkel, 74 I.D. 373 (1967), is entirely misplaced. It is not even a case concerning acreage limitation. It is solely concerned with the propriety of land descriptions and, as such, it serves to illustrate my point, discussed above, that non-standard land descriptions often require extensive, time-consuming adjudication before a final determination can be made as to whether or not they are acceptable. If, ultimately, years later, it is decided that an offeror's description was in fact acceptable, it is unreasonable to assert that, pending that final decision, he was not chargeable with any acreage so described.

Also, it is noteworthy that the majority's quotation from Kunkel is taken out of context, and has no reference to acreage chargeability under the statutory limitation.

I would sustain our previous decision in this case.

Edward W. Stuebing
Administrative Judge